# SUMMARY of COOPERATIVE CASES




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UNITED STATES DEPARTMENT OF AGRICULTURE

FARMER COOPERATIVE SERVICE


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# MONOPOLIES - EXEMPTIONS OF AGRICULTURAL COOPERATIVES UNDER PROVISIONS OF CLAYTON and CAPPER-VOLSTEAD ACTS.



(Sunkist Growers, Inc. v. Winckler & Smith Citrus Products Co.)
(284 F. 2d 1, (1960))

Private action for treble damages under the Sherman Act, 15 U.S.C.A., §§ 1-7, 15. Appellants are Sunkist Growers, Inc., and The Exchange Orange Products Company, a corporation (hereinafter referred to as Exchange Orange or EOP). Appellees are Winckler & Smith Citrus Products Co., a corporation and Ronald Walker, as trustee of Winckler & Smith. The action was tried in the district court before a jury, which returned a verdict of $500,000. This was trebled to $1,500,000, and from that there was deducted the $2,500 originally paid in compromise by the one-time defendant TreeSweet. There were added attorneys' fees fixed at $195,000 and costs.

Sunkist Growers, Inc., is a nonprofit agricultural cooperative marketing association. The Exchange Orange Products Company was a wholly-owned subsidiary of Sunkist. Together with Sunkist and Exchange Orange, there was originally named as a defendant Exchange Lemon Products Company, a nonprofit corporation (hereinafter sometimes referred to as ELP or Exchange Lemon).

Appellees alleged in their first cause of action (Sec. 1 of the Sherman Act; 15 U.S.C.A. §1) and appellants deny, that appellants conspired and entered into contracts which had the purpose and effect of unreasonably restraining interstate commerce in canned California citrus fruit juice, particularly single strength orange juice. This was proved, said appellees, by "six acts". They were:

(a) In the 1950-51 canning season ELP processed 28,812 tons of oranges for EOP at cost, and without profit to ELP. Appellants admit this.

(b) During the same period, EOP processed 1,740 tons of lemons for ELP on the same basis. Appellants admit this.

(c) Sunkist and EOP agreed to establish and maintain the price of by-product oranges available to independent processors at a level making it impossible for processors like appellees to purchase oranges from EOP, or any other source, at a price or under any other arrangement enabling appellees and other processors to produce and sell canned natural orange juice and frozen concentrate juice at prices competitive with prices charged by appellants and their favored customers, TreeSweet and Silzle. Appellants deny these allegations.

(d) Under a contract effective July 23, 1951, between EOP and TreeSweet, TreeSweet received oranges from EOP, made single strength orange juice for EOP at cost and without profit to TreeSweet, and then bought the orange juice from EOP at Sunkist's then published price for single strength orange juice, less certain discounts not available to other customers, including appellees. The purpose and effect of this contract allegedly was to enable TreeSweet to obtain orange juice at a cost which prevented appellees from competing with Sunkist or TreeSweet in the natural orange juice market. Appellants admit the contract and supplying the oranges; deny the balance.

(e) Under a contract effective June 26, 1951, between EOP and Silzle, EOP furnished oranges to Silzle at $22.50 per ton, which was lower than the price to appellees or other processors. The purpose and effect allegedly was to give Silzle oranges at a price with which appellees could not compete. Appellants admitted the contract and furnishing the oranges; denied the purpose or effect.

(f) EOP refused appellees a TreeSweet- or Silzle-type contract in 1951. Appellants denied the refusal but admitted such a contract was not made.

Appellees alleged that as a result of the above acts of appellants and the monopoly control of Sunkist and Exchange Orange in 1951 over the amount and price of Valencia oranges available for processing, appellees were unable to process natural and frozen concentrate fruit juice in competition with

Silzle, TreeSweet and Sunkist, which alleged facts eliminated appellees as a competitor, and forced the filing of proceedings under Chapter X of the Bankruptcy Act.

Under section 2 of the Sherman Act; 15 U.S.C.A. §2, it was charged that acts (a) to (f) above were done by appellants with monopoly control over citrus fruit markets in California and Arizona, and in so doing and in making such contracts, the parties named conspired to monopolize, and monopolized, single strength Valencia orange juice.

The second amended complaint additionally alleged contracts with independent processors, Hyland-Stanford and Mission Dry, giving them first call on oranges and processing to the exclusion of Independent Fruit Growers' Association and Morgan Ward, its selling agent, and one of the appellees' principal suppliers of by-product oranges.

It was not appellees' position that appellants did not have certain exemptions from the antitrust laws under the Clayton and Capper-Volstead Acts, 15 U.S.C.A. § 12, et seq.; 7 U.S.C.A. §§ 291, 292, nor that they could not, as agriculturists, join together to make marketing agreements. It was appellees' position that such exemptions so granted were not absolute. Appellants could monopolize by-product oranges or single strength orange juice, either in the national market or in the California-Arizona area market, provided they achieved their monopoly position lawfully. Appellants could set any price they desired for their juice. They could make any "true" processing contracts with TreeSweet and Silzle, or with anyone else. They could refuse to make oranges available to appellees, if activated by "proper" business motives, as distingushed from "improper" motives.

Appellees insisted, however, that appellants having monopolized by-product oranges from which single strength juice was made, and by such monopolization having control over the amount of by-product oranges available to independent contractors; having further set a price of $40.00 per ton for such oranges (a price alleged to have been one at which no independent processor could buy, process and compete with Sunkist in the single strength juice market); having at the same time (i.e., during the one year of 1951, here involved) made oranges available to

TreeSweet and Silzle, competitors of appellees, under so-called "processing" contracts which were more than that because they permitted the competitors to secure oranges at a price substantially lower than $40.00 per ton; the appellants were thus guilty of a conspiracy or combination unauthorized by antitrust law, even as modified by the limited agricultural marketing exemptions.

There were four principal questions raised on appeal. First, was any violation of antitrust laws made out?

In considering this question the appellate court ruled in substance as set forth below.

Sunkist was a nonprofit agricultural cooperative marketing association. So was EOP, a subsidiary of Sunkist. So was ELP, an association of growers who were likewise members of Sunkist. The exemption claimed by appellants rests within § 6 of the Clayton Act and § 1 of the Capper-Volstead Act.

According to the appellate court, the legislative history of the Clayton and Capper-Volstead Acts makes it clear that farmers (including orange growers) were granted the right to combine, contract, and conspire together in restraint of trade in associations which, without the exemptions, would have violated the Sherman Act. Its purpose was to permit farmers to compete with large corporations, but by its terms, the exemption was not absolute - the individuals were permitted to associate in groups and the associations were permitted specifically to do but two things: arrange "marketing agencies in common" and contract and agree with their members participating, if necessary to effect such purposes.

The appellate court quoted as follows from a recent Supreme Court case:

> "[T]he general philosophy of both [Acts] was simply that individual farmers should be given, through agricultural cooperatives acting as entities, the same unified competitive advantage - and responsibility - available to business men acting through corporations as entities." Maryland and Virginia Milk Producers Association v. United States. 362 U.S. at p. 466, S. Ct. at p. 853.

"[T]he [Capper-Volstead] Act did not leave cooperatives free to engage in practices against other persons in order to monopolize trade, or restrain or suppress competition with the cooperative." Id., 362 U.S. at p. 467, 80 S. Ct. at p. 854.

The appellate court concluded that no blanket exemption was created by either section 6 of the Clayton Act, or Section 1 of the Capper-Volstead Act which permits an agricultural cooperative to either unlawfully monopolize, or attempt to monopolize, under Section 2 of the Sherman Act, nor to do any acts to restrain or suppress competition, or which resulted in the restraint or suppression of competition prohibited by Section 1 of the Sherman Act, if such acts, in either event, fall within the prohibitions of the respective Sherman Act sections. Thus, asserted the court, the question as to whether there had been a violation of the antitrust laws was ordinarily one to properly go to the jury.

The appellate court considered whether there was proof of the violation of antitrust laws, despite the limited exemption the appellant, Sunkist, enjoyed, sufficient to make out a question of fact for the jury. To pass upon that, the appellate court considered the following facts of the case in detail in an attempt to establish and define the product and pertinent market involved: The product involved, the relevant market, competition and prices in the produce involved in the relevant market, contracts in the 1951 season, and the alleged refusal to sell. The appellate court observed that by the amendment to the complaint the relevant market was restricted to "single strength Valencia [orange] juice." It was alleged that because of the monopoly control by Sunkist and EOP over the quantity and price at which Valencia product oranges were made available to independent processors of single strength juice other than TreeSweet and Silzle, and the aforesaid contracts, plaintiff was unable to and did not process any single strength Valencia juice in 1951. The court concluded that the relevant market area involved was the California-Arizona area, and that the four principal independent processors of canned single strength orange juice in the California-Arizona area, namely TreeSweet, Silzle, Case-Swayne and appellee were in competition with each other and each of them competed with Sunkist, in the sale of canned single strength orange juice in interstate commerce.

As to the contracts in the 1951 season the appellate court observed that the question permitted to go to the jury for determination was why Sunkist, in 1951, sold to one processor of

"single strength Valencia orange juice" at one price and failed to sell to another at any price. The court stated that if there was a refusal, the question was whether or not it was a valid exercise of business judgment. It stated also that if it was a contract made to restrain competition or to fix prices, or, from a position of legal monopoly, was used illegally to monopolize or attempt to monopolize, then appellees were entitled to recover damages proximately resulting from appellants' illegal acts. Such questions, according to the court, obviously would ordinarily be questions of fact.

The appellate court also concluded that the question as to whether there had been a concerted refusal to sell, as alleged by appellees, or an illegal unilateral refusal to sell, were questions of fact for the jury's determination and that such submission to the jury was, in theory, correct.

The second question considered by the appellate court was: Was there error in instructing or refusing to instruct the jury?

Under the charge to the jury, appellants urged that the jury could have found that the conspiracy consisted of only Sunkist or EOP and ELP. Such a conspiracy, according to appellants, involved only exempt cooperatives, and these instructions removed any exemption created by Capper-Volstead from the case entirely. The court stated that appellants' argument first presupposed that agricultural cooperatives could combine to fix prices or eliminate competitors with immunity, otherwise Capper-Volstead means nothing. The court asserted that it did not agree with this position because it did not understand since the Milk Producers decision that different agricultural cooperatives, combining together were entitled to claim a total immunity for acts which they may lawfully do unilaterally, any more than individuals may claim for certain of their joint actions the same immunity under antitrust laws which would exist as to their several independent acts.

The court also observed that the error as allegedly compounded by the loose language of the instructions to the jury was followed by a grudging approval of such instruction to the jury by both sides, just before the jury retired, and it concluded that there existed support in the law for such instructions.

The third question discussed by the appellate court was: Was there error in rulings on admission and rejection of evidene?

Appellants sought to introduce evidence "heard from others in the industry" that Winckler & Smith's juice was regularly watered and adulterated, and was of poor and inferior quality, and that such facts were in defendants' corporate "mind" when it refused to deal with Winckler & Smith in 1951, and this excused its "refusal" to so deal. This, according to the court, was, if admissible, material not only on the issue of liability, but also on the nature and extent of damages that proximately resulted from any liability found, but that the difficulty with appellants' position with respect to admissibility on the question of liability was that specific information as to such "watering" had not reached the appellants at the time of their "refusal" in 1951. They had suspected that such facts existed; there had been rumors thereof, but no substantiation amounting to proof. The court concluded that if a person charged with making a decision (which may or may not be a violation of law, dependant upon the intent and purpose and effect which accompanies it) is willing to rest such decision on surmise, suspicion, conjecture, and intuition, he has that right, but so acts at his peril.

The court found no ruling of the trial court on the issue of liability that constituted error so prejudicial as to constitute reversible error. However, the court ruled that certain exhibits containing statistics as to the amount of acid in Winckler's product, which according to the testimony of one witness,indicated an addition of water to the product were clearly admissible on the issue of damages and that the court found the exclusion of such evidence was error.

As to the question of error in affixing the attorneys' fees of $195,000, the appellate court asserted that it did not know what amount would be recovered by appellees on a second partial trial and that the question could be raised below by either side and if necessary, on a subsequent appeal. The appellate court stated that it would not, therefore, disturb the determination made relative to the amount of attorneys' fees.

The judgment heretofore rendered on the jury's verdict was affirmed on the issue of liability, and reversed and remanded on the issue of the amount of damages.

# # #

INTERNAL REVENUE RULING

QUALIFIED PENSION, PROFIT-SHARING, and STOCK BONUS PLANS.

(Rev. Rul. 60-338; I.R.B. 60-44, p. 6-7)

This case involved a cooperative corporation which purchased merchandise exclusively for its members. The cooperative added to the cost price of the merchandise an "overcharge" or "markup" to provide funds from which to pay operating expenses. Held, such "overcharge" constituted "profits" for purposes of qualifying a profit-sharing plan under section 401(a) of the Internal Revenue Code of 1954.

The amount of the "overcharge" was placed in a fund denominated "overcharges" and was handled in the nature of a trust fund on the theory that the whole thereof, after deducting operating expenses, was property of the stockholder members. Therefore,the entire amount of markup was either expended as operating expenses or returned to the members. The corporation had a profit-sharing plan for its employees.

Section 1.401-1(b)(1)(ii) of the Income Tax Regulations provides, in part, that a profit-sharing plan is a plan established and maintained by an employer to provide for the participation in his profits by his employees or their beneficiaries.

The cooperative's contributions to its profit-sharing plan were made only from its "markup" or "overcharge" receipts; that is to say, from the total amount of such receipts remaining with the company after deducting therefrom its total operating costs.

The ruling states that a profit-sharing contribution constituted deferred compensation and that it makes no difference that the compensation paid in the instant case was paid from funds which otherwise would be distributed to members since they got no more or less whether the compensation was paid currently or under a profit-sharing plan.

# # #

STATE TAXATION - TRANSACTION WITH FEDERAL GOVERNMENT

(Choctawatchee Electric Co-operative, Inc. v. Ray E. Green, Comptroller of the State of Florida. (123 So. 2d 357 (October 21,1960))

Action in this case was brought to determine whether the Choctawatchee Electric Co-operative, Inc., which had executed promissory notes evidencing a loan from the United States was liable for payment of a state documentary stamp tax. The Circuit Court of Leon County entered a decree adverse to the corporation and the corporation appealed. The District Court of Appeals affirmed the decree and held that the documentary stamp tax was not exclusively upon the promissory notes but was upon the transaction between the corporation and the government, and that the corporation was liable for the tax.

The sole question presented on appeal was whether the appellant, a private Florida corporation, was liable for payment of the documentary stamp tax on promissory notes executed by it in the State of Florida which were thereafter delivered and held by the United States of America as evidence of a loan. The notes were secured by a duly executed mortgage in favor of the United States and recorded in the public records of Walton County. Appellant contended that the tax in question was one levied exclusively upon the documents evidencing the loan and that under the statutes these documents as property of the United States were exempt from all forms of taxation. In support of its position, appellant referred to the title of the act imposing the tax which recited that it was "An Act Levying and Imposing an Excise Tax on Documents to Raise Revenue for the Support of the State Government; and Prescribing Penalties for Failure to Pay Said Tax." The eighth section of the act made the tax specifically applicable to promissory notes and fixed the rate to be collected. The appellate court stated that taken literally, the plain language of the act provided support for appellant's position that the tax was assessed and levied upon the documents described in the act, and not upon the transaction of which the documents are but an integral part.

The circuit court found that the intent of the statute was to levy an excise tax against the maker of promissory notes for the privilege of engaging in a transaction pursuant to which the

notes were made, executed, and delivered. It interpreted the statute to mean that "There shall be paid the taxes specified in this chapter for and in respect to the several documents described in the following sections by any person who makes the same" imposed upon the maker of the notes and levied upon the transaction between the appellant and the United States and not upon the documents consisting of the promissory notes in question.

In affirming the circuit court's decision the appellate court referred to a recent Florida Supreme Court case which it stated made it clear that the documentary stamp tax was an excise levied upon the transactions of which the documents described in the act were merely a part, and not a tax upon the documents themselves. The court observed that similar constructions had been placed upon comparable acts by courts in the federal jurisdiction. North American Company v. Green, Fla. 1960, 120 So. 2d, 603. Graniteville Mfg. Co. v. Query, 283 U.S. 376.

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NEGLIGENCE - APPEAL and ERROR

(Tallapoosa River Electric Cooperative, Inc., v. Robert T. Burns - 124 So. 2d 672 (November 1960))

Robert T. Burns and the Crosby-Hodges Milling Company brought suit for damages against the Tallapoosa River Electric Cooperative, Inc., for the death of some 2,100 baby chicks, caused by the alleged negligence of the coopeative. The jury returned a verdict for $1,500 and the cooperative appealed.

The complaint contained three counts based upon simple negligence of the defendant in its failure to furnish electrical current in sufficient quantities to properly heat plaintiff's brooder houses. Appellant complained of the trial court's

action in overruling its demurrer to Counts 1 and 2. The Supreme Court ruled that all three counts presented the same issue and that evidence offered under either count was admissible. It asserted that even conceding the insufficiency of Counts 1 and 2 the trial court's action in overruling the demurrer thereto was error without injury, since the jury's verdict could be referred to Count 3 which was not tested by demurrer.

The court also held that it was not reversible error to deny, in a civil case, the defendant's motion to exclude the plaintiff's evidence, and that if there was a scintilla of evidence supporting the action, the refusal of the trial court to give the general charge with hypothesis for the defendant was proper.

Concerning the trial court's overruling of appellant's motion for a new trial, the court stated that the verdict of the jury was presumed to be correct and would not be reversed unless after allowing all reasonable presumptions of its correctness, the preponderance of the evidence against the verdict was so decided as to clearly convince the court that it was wrong and unjust.

Affirmed.

# # #

WORKMEN'S COMPENSATION - HEART CONDITION

(Farmers Cooperative Association v. Thomas J. Madden, 356 P. 2d 741 (November 1960))

Original proceedings brought by Farmers Cooperative Association, Mt. View, Oklahoma, employer and its insurance carrier, Farmers Elevator Mutual Insurance Company, petitioners, to review an award of the State Industrial Court made to Thomas J. Madden, Claimant. Award was sustained.

Employer challenged, as unsupported by competent evidence, the finding of the trial tribunal that claimant's disabling

condition of the heart resulted from an accidental personal injury within the meaning of the Workmen's Compensation Act, 85 OS 1951, § 1 et seq.

While lifting and restacking somewhere between 25 and 50 100-pound boxes of baling wire on the afternoon of April 2, 1959, Thomas J. Madden, claimant, aged 61, suddenly experienced a severe pain in his chest. After resting a while he resumed working but when the pain continued for several days, claimant became unable to work at all. He sought treatment from a local doctor who referred him to a heart specialist. The specialist diagnosed the case as an "acute myocardial infarction", caused by strain of heavy lifting. There was no indication of a preesisting chronic heart disease.

Disability attributable to a condition of the heart is compensable if caused by antecedent strain out of and in course of hazardous employment covered by the Workmen's Compensation Act.

Whether a workman engaged in hazardous employment did actually sustain the accidental injury to which his disability is sought to be attributed, presents a question of fact to be resolved by the State Industrial Court. Its findings on such issue will not be disturbed on review when reasonably supported by competent evidence. The record viewed on its entirety revealed that the claimant's physician was familiar with, and assumed substantially all, the salient facts as adduced by the proof. There was not expert proof in the record to support employer's suggested theory that the heart condition resulted from spontaneous "natural body processes". The court ruled that the probative force of the testimony of the claimant's doctor remained unimpaired.

The court also held that the record disclosed no substantial failure to afford the employer a full and complete hearing on the issues raised in the proceeding, and the award was sustained.

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ANTITRUST VIOLATION - CAMPAIGN FOR LEGISLATION.

(Eastern Railroad Presidents' Conference, et al., v. Noerr Motor Freight, Inc., et al.
81 S. Ct. 523 (1961))

This litigation is the outgrowth of the struggle between railroads and the trucking industry for the long-haul freight business, which struggle has been going on for many years.

The Supreme Court reversed the trial court's judgment and held that the railroads' publicity campaign had not violated the Sherman Act. It held that the Sherman Act does not prohibit two or more persons from associating together in an attempt to persuade the legislature or the executive to take particular action with respect to a law that would produce a restraint or a monopoly.

Complaint was filed in the United States District Court in Pennsylvania in behalf of 41 Pennsylvania truck operators and their trade association, the Pennsylvania Motor Truck Association. The complaint named as defendants 24 Eastern railroads, an association of the presidents of these railroads known as the Eastern Railroad Presidents' Conference, and a public relations firm, Carl Byoir & Associates, Inc., and charged that the defendants had conspired to restrain trade in and monopolize the long-distance freight business in violation of §§ 1 and 2 of the Sherman Act. The gist of the conspiracy alleged that the railroads engaged Byoir to conduct a publicity campaign against the truckers designed to foster the adoption and retention of laws and law enforcement practices destructive of the trucking business, to create an atmosphere of distaste for the truckers among the general public, and to impair the relationships existing between the truckers and their customers. This campaign was described in the complaint as "vicious, corrupt, and fraudulent". One of the several charges was that the defendants had succeeded in persuading the Governor of Pennsylvania to veto a measure known as the "Fair Truck Bill", which would have permitted truckers to carry heavier loads over Pennsylvania roads.

The prayer of the complaint was for treble damages under § 4 of the Clayton Act and an injunction restraining the defendants from further acts in pursuance of the conspiracy. A stipulation was entered that the only damages suffered by the individual truck operators was the loss of business that resulted from the veto of the "Fair Truck Bill" by the Governor of Pennsylvania, and accordingly, the claim for damages was limited to an amount based upon the loss of profits as a result of this veto plus the expenses incurred by the truckers' trade association for the purpose of combatting the railroads' publicity campaign. The prayer for injunctive relief was much broader, however, and asked that the

defendants be restrained from disseminating any disparaging information about the truckers without disclosing railroad participation, from attempting to exert any pressure upon the legislature or Governor of Pennsylvania through the medium of front organizations, from paying any private or public organizations to propagate the arguments of the railroads against the truckers or their business, and from doing "any other act or thing to further . . . the objects and purposes" of the conspiracy.

The railroads admitted that they had conducted a publicity campaign designed to influence the passage of state laws relating to truck weight limits and tax rates on heavy trucks, and to encourage a more rigid enforcement of state laws penalizing trucks for overweight loads and other traffic violations, but they denied that their campaign was motivated either by a desire to destroy the trucking business as a competitor or to interfere with the relationships between the truckers and their customers. The railroads insisted that the campaign was conducted to further their rights "to inform the public and the legislatures of the several states of the truth with regard to the enormous damage done to the roads by the operators of heavy and especially overweight trucks, with regard to their repeated and deliberate violations of the law limiting the weight and speed of big trucks, with regard to their failure to pay their fair share of the costs of constructing, maintaining and repairing the roads, and with regard to the driving hazards they create. . . ." The defendants contended that this campaign did not constitute a violation of the Sherman Act, presumably because that Act could not properly be interpreted to apply either to restraints of trade or monopolizations that resulted from the passage or enforcement of laws or to the efforts of individuals to bring about the passage or enforcement of laws.

Subsequently, the defendants broadened the scope of the litigation by filing a counterclaim charging that the truckers had, themselves, violated sections 1 and 2 of the Sherman Act by oonspiring to destroy the railroads' competition in the long-haul freight business and to monopolize that business for heavy trucks. The prayer for relief of the counterclaim like that of the truckers' original complaint, was for treble damages and an injunction restraining continuance of the allegedly unlawful practices.

After hearings the trial court entered a judgment, based upon extensive findings of fact and conclusions of law, that the railroads' publicity campaign had violated the Sherman Act while that of the truckers' had not. The court rested its judgment upon findings, first, that the railroads' publicity campaign, insofar as it was actually directed at lawmaking and law enforcement authorities, was malicious and fraudulent - and secondly, that the railroads' campaign had as an important purpose the destruction of the truckers' goodwill, among the truckers' customers and the general public, thus injuring the truckers in ways unrelated to the passage and enforcement of law. The trial court awarded only nominal damages to the individual truckers, holding that no damages were recoverable for loss of business due to the veto of the Pennsylvania "Fair Truck Bill". The judgment, however, did award substantial damages to the truckers' trade association as well as the broad injunction asked for in the complaint.

The conclusion that the truckers' publicity campaign had not violated the Sherman Act was reached despite findings that the truckers had also engaged in a publicity campaign designed to influence legislation, and despite findings that the truckers had utilized third-party technique in this campaign. The trial court found that the truckers' campaign was purely defensive in purpose and concluded that the truckers were not trying to destroy a competitor. The court held that the truckers' campaign was well within the rule of reason which governs the interpretation of §§ 1 and 2 of the Sherman Act, and consequently dismissed the counterclaim.

The railroads appealed from this judgment, both as to the conclusion that they had violated the Sherman Act as charged in the original complaint and as to the conclusion that the truckers had not violated the Act as charged in the counterclaim. The Court of Appeals for the Third Circuit upheld the judgment of the District Court in every respect. Petition for certiorari was filed on behalf of the railroads and Byoir limited to the question of the correctness of the judgment insofar as it held that they had violated the Shermah Act. The petition was granted. The following is a summary of the Supreme Court's decision reversing the judgments of the lower courts.

It has been recognized since the landmark decision of the Court in Standard Oil Co. v. United States that the Sherman Act

forbids only those trade restraints and monopolizations that are created, or attempted, by the acts of "individuals or combinations of individuals or corporations." Where a restraint upon trade or monopolization is the result of valid governmental action, as opposed to private action, no violation of the act can be made out.

The Sherman Act does not prohibit two or more persons from associating together in an attempt to persuade the legislature or the executive to take particular action with respect to a law that would produce a restraint or a monopoly. It is clear that the Sherman Act does not apply to the activities of the railroads, at least insofar as those activities comprised mere solicitation of governmental action with respect to the passage and enforcement of laws. As to the presence in the railroads' publicity campaign of the additional factor alleged in the complaint that the railroads' sole purpose in seeking to influence the passage and enforcement of laws was to destroy the truckers as competitors, this fact could not transform conduct otherwise lawful into a violation of the Sherman Act. Also, the use of the so-called third-party technique in a publicity campaign designed to influence governmental action does not constitute a violation of the Sherman Act. The Supreme Court found that the Sherman Act was not violated by either the railroads or the truckers in their respective campaigns to influence legislation and law enforcement.

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